

m/027/007
FILED

APR 1 0 1997

SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---oo0oo---

IN THE MATTER OF THE PETITION	:	
FILED BY THE DIVISION OF OIL,	:	NOTICE OF AGENCY ACTION
GAS AND MINING FOR AN ORDER	:	
REQUIRING IMMEDIATE RECLAMATION	:	DOCKET NO. 97-009
OF THE DRUM MINE, FROM WESTERN	:	CAUSE NO. M/027/007
STATES MINERALS CORPORATION AND	:	
JUMBO MINING COMPANY, MILLARD	:	
COUNTY, UTAH.	:	

---oo0oo---

THE DIVISION OF OIL, GAS AND MINING, ("Division"), hereby petitions the Board of Oil, Gas and Mining, ("Board"), for an Order directing the operators of the Drum Mine to immediately begin reclamation of the Drum Mine site which is located in Section 7, Township 15 South, Range 10 West, Salt Lake Base Meridian ("SLBM"), Millard County, Utah. The operators of record are Western States Minerals Corporation ("WSMC") and Jumbo Mining Company ("JMC"). The company representatives are: for WSMC, Allan Cerny of Wheat Ridge, Colorado, and for JMC, Edward B. King of Austin, Texas.

JURISDICTION

1. This action is brought by the Division pursuant to Utah Code Annotated § 40-8-7 (1953, as amended).
2. Jurisdiction over this matter is conferred upon the Board by Utah Code Annotated § 40-8-6 (1953, as amended).

NOTICE REQUIREMENTS

3. Pursuant to Sections 63-46b-6 to 63-46b-11 of Utah Code Annotated (1953, as amended), the hearing will be conducted formally.
4. The hearing will be held on May 28, 1997. Any party who fails to appear at said hearing may be held in default.
5. The names and address of all persons to whom Notice of Agency Action should be given are attached as EXHIBIT "1" and by this reference incorporated herein. All other exhibits will be provided at a later date.

STATEMENT OF THE CASE

The Drum Mine is located in a historic mining district, approximately 35 miles northwest of the town of Delta. The legal description is Section 7, Township 15 South, Range 10 West, SLBM. On November 28, 1993, the Division notified WSMC's of its permit approval. On July 27, 1989, the Board granted a partial permit transfer under which approximately 84 acres of WSMC reclamation responsibilities were transferred to Jumbo. The transfer clearly stated that WSMC would continue to have reclamation responsibility for approximately 42 acres. Under R647-4-117.4 the Division is seeking an order from the Board requiring reclamation of a large mine after a five year cessation. The Drum Mine has been inactive since October of 1990, and thus the Board has the authority to order reclamation of the mine. The Division has chosen to seek the order due to the failure of JMC or WSMC to demonstrate to the Division, after notice and hearing, a reasonable likelihood that the mine will be imminently returned to an active state. Therefore, the Division requests that the Board pursuant to R647-4-117.4 require immediate reclamation of the site.

STATEMENT OF THE FACTS

6. On July 8, 1983, WSMC filed its Mining and Reclamation Plan and Notice of Intention ("MRP NOI") (EXHIBITS A & B (chronology)).

7. On November 17, 1983, the Board approves amount and form of WSMC's surety (EXHIBIT C).

8. On November 28, 1983, the Division notifies WSMC of its permit approval. (EXHIBIT D).

9. On July 27, 1989, Western States partially transferred its permit to JMC. (EXHIBIT E) The transfer left WSMC responsible for approximately 42 acres of the mine and JMC responsible for approximately 84 acres (EXHIBIT E attachment #1).

10. On June 6, 1996, Division staff performed a joint site inspection of the Drum Mine with representatives of the Utah State Division of Water Quality ("DWQ") and the Bureau of Land Management ("BLM"). The purpose of the inspection was to assess the current status of operations, evaluate the onsite conditions, and determine if any significant changes had taken place since our last inspection. Some routine maintenance and minor cleanup actions were noted during the inspection, however, active mining operations at the site remained in a state of suspension. Mining activities were suspended on October 1, 1990, when the operator was directed to cease continued heap leaching operations on the existing pads (pad liners had exceeded their design life), by DWQ. Annual Reports and additional

site inspections since October of 1990 confirm that mining operations have remained suspended. (EXHIBITS F, G & H)

11. On August 1, 1996, the BLM reiterated that Jumbo would have to amend its Plan of Operation before new heap construction would be allowed. Moreover, the plan could not be approved unless all necessary state permits were obtained including a permit from The Division of Water Quality ("DWQ"). (EXHIBIT F)

12. On August 1, 1996, the Division sent a certified letter to JMC informing them of our intention to initiate enforcement provisions of Title 40-8-21(3) and Rule R647-4-117.4 (Notification of Suspension or Termination of Operations). These provisions authorize the Division to require reclamation of a large mining operation after five (5) years of continued suspension. JMC was given until August 8, 1996, to inform the Division of any extenuating circumstances that would be cause for the Division to alter our position in the matter, before we proceeded with the issuance of a formal Notice of Agency Action. (EXHIBIT I)

13. On August 6, 1996, the Division and counsel met with WSMC and their counsel at the Department of Natural Resources Attorney General's office. The Division hand delivered WSMC a letter and a file memorandum explaining the circumstances behind a recently revised reclamation surety estimate for WSMC's permitted portion of the Drum Mine. (EXHIBIT J)

14. On August 6, 1996, the Division received a letter from JMC expressing their concerns over the August 1st directive and their justification for why the Division should not initiate a formal Notice of Agency Action requiring reclamation of the mine site. The Division evaluated JMC's response and found no justification to delay issuance of formal enforcement actions against the parties to reclaim their respective portions of the existing mine site disturbances. (EXHIBITS K & L)

15. On August 9, 1996, the Division sent a certified letter to WSMC and JMC informing them of the Division's intention to initiate enforcement provisions of the Mined Land Reclamation Act and rules which authorize the Division to require reclamation of a large mining operation after five (5) years of continued suspension. WSMC and JMC were both directed to commence immediate reclamation of their respective portions of the surface disturbance associated with the Drum Mine site. On August 16, 1996, a certified clarification letter was sent by the Division to both parties which addressed questions raised regarding the proper procedures and a time frame for filing their formal response to the Division's August 9th reclamation directive. (EXHIBITS L, M, and N)

16. On August 15, 1996 representatives from JMC, Ed King and David Hartshorn, have an informal conference with the Division. (EXHIBIT N)

17. On August 23, 1996, the Division received a letter from WSMC's legal counsel in response to our August 9th directive. The letter outlined WSMC's position/opinion that the Division had misdirected its reclamation directive to them and should look to JMC for ultimate resolution and responsibility for full reclamation of the Drum Mine site. (EXHIBIT O)

18. On September 9, 1996, the Division received a fax from JMC expressing their position that they did not believe it was appropriate to reclaim the Drum Mine site at this time and would not commence reclamation. (EXHIBIT P)

19. On April 9, 1997, Jim Carter made a finding that a conversion of the adjudicative proceeding was in the public interest and the conversion of the proceeding would neither prejudice WSMC nor Jumbo. Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, of the chronological record established that all parties have had ample opportunity to make their positions known to the Division.

20. On March 26, 1997, the BLM confirmed that the Drum Mine could not meet regulatory requirements for operation in its present state. (EXHIBIT S)

21. On April 4, 1997, DWQ confirmed that the Drum Mine could not meet regulatory requirements for operation in its present state. (EXHIBIT T)

COUNT I

22. The Division incorporates by reference paragraphs 1 through 15 as stated above.

23. The operators of record, JMC and WSMC, are in noncompliance with § 40-8-16(2)(c) and Rule R647-4-117.4 (Notification of Suspension or Termination of Operations). These provisions authorize the Division to require reclamation of a large mining operation after five (5) years of continued suspension.

PRAYER FOR RELIEF

WHEREFORE, The Division requests that the Board enter the following order:

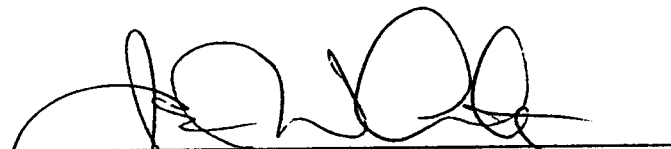
A. Issue a Board Order, with appropriate time frames, requiring Western States Mining Company to commence reclamation of its mining-related disturbances associated with the Drum mine site. The reclamation shall satisfy the requirements of R647-4-111 and all other requirements arising under state or federal law.

B. Issue a Board Order, with appropriate time frames, requiring Jumbo Mining Company to commence reclamation of its mining-related disturbances associated with the Drum Mine site. The reclamation shall satisfy the requirements of R647-4-111 and all other requirements arising under state or federal law.

C. Should either or both parties fall more than 30 days behind the time schedule imposed by the Board, issue an order allowing the Division to commence surety forfeiture proceedings. This would enable the Division (and the respective cooperating regulatory agencies) to utilize the forfeited funds to jointly reclaim the mining related disturbances associated with the Drum Mine site.

D. In the event that either or both parties' surety proves inadequate to conduct reclamation, issue an order authorizing the attorney general to seek a deficiency judgment against the party or parties for its mining-related disturbance.

Requested this 10th day of April, 1997.



James W. Carter, Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801
Telephone: (801) 538-5340

p:dr:97-009.naa

EXHIBIT "1"

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF AGENCY ACTION for Docket No. 97-009, Cause No. M/027/007 for the Drum Mine to be mailed by first-class mail, postage prepaid, this 10th day of April, 1997, to the following:

CERTIFIED RETURN RECEIPT

P 074 977 774

Allan R. Cerny, Secretary
Western States Minerals Corporation
4975 Van Gordon Street
Wheat Ridge, Colorado 80033

CERTIFIED RETURN RECEIPT

P 074 977 775

E. B. King
Jumbo Mining Company
6305 Fern Spring Cove
Austin, Texas 78730

HAND DELIVERED:

Mary Ann Wright
Associate Director, Mining
Division of Oil, Gas and Mining
Department of Natural Resources
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

COURTESY COPIES TO:

Don Ostler
Division of Water Quality
Department of Environmental Quality
288 North 1460 West
Salt Lake City, Utah 84116

Rex Rowley
Fillmore District Office
Bureau of Land Management
P.O. Box 778
Fillmore, Utah 84631

